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NOTES OF THE WEEK

Protection by Punishment

The primary object of punishment by the courts is the protection of the public from lawbreakers. How best that can be accomplished and what kind of punishment is justified are matters of debate, but few people would make bold to say that punishment is unjustifiable. There are cases in which a court feels pity for the offender because of his mental or physical condition, and would like to refrain from passing sentence, but finds it indispensable that he should be sent to prison as a measure of protection for the public. Often such a man is mentally unstable, but not certifiable, and the only institution available is prison. In prison he may receive appropriate treatment in the light of modern knowledge and perhaps benefit so as to be less of a danger or nuisance on his release. Many would advocate special institutions for all such offenders, and these are no doubt on the way to being established in sufficient numbers to deal with the various classes of offenders in need of special psychiatric treatment because they are not considered fully responsible.

At the Durham Assizes a man who pleaded guilty to a number of charges of arson and attempted arson was said to have an urge to burn and destroy, and to have a history showing mental instability. Oliver, J., who sentenced him to five years' imprisonment, said this was so as to protect the man against himself and to protect society, and not as vengeance: his record seemed to show him to be extremely dangerous. He would be looked after in gaol. He was not in the ordinary way by intention a criminal.

Duty of an Innkeeper

The Western Mail reports a warning given at the Llandrindod Wells licensing sessions to publicans about failure to supply refreshment when asked for it. The chairman is stated to have pointed out that at common law all licensees were expected to provide normal refreshments when people called. Some complaints had been made and although to lock the door was not exactly refusing to supply, yet if the police received several notifications of people knocking at doors and getting no reply, the magistrates would have to take notice.

An innkeeper is bound to receive and lodge in his inn all comers who are travellers, and to entertain them at reasonable prices, unless he has some reasonable ground of refusal. This rests on ancient authority. There are various decisions on what are reasonable grounds for refusal. An innkeeper is not bound to send out for food, and he may be justified in reserving food for other meals for expected travellers, and may reserve tables for those who have booked, *R.* v. *Higgins* [1947] 2 All E.R. 619. Unreasonable refusal to receive or entertain a traveller may be dealt with by civil action or by indictment.

What is not always realized is that not every licensed house is an inn and also that an unlicensed house such as a temperance hotel may be an inn. An inn has been defined as a house, the owner of which holds out that he will receive all travellers and sojourners who are willing to pay a price adequate to the sort of accommodation provided, and who come in a condition in which they are fit to be received. It becomes a question of fact for the court to decide whether a defendant is or is not an innkeeper.

Committed for Sentence

The powers given by s. 28 and s. 29 of the Magistrates' Courts Act, 1952, to magistrates' courts to commit certain offenders to quarter sessions for sentence do not necessarily produce, when exercised, the results which the committing court thinks desirable. In a case dealt with under s. 28 the magistrates' court clearly is of opinion that its own powers of dealing with the case are inadequate and that a sentence of borstal detention is more likely to be a suitable sentence, and when the committal is under s. 29 its purpose is to enable quarter sessions to pass a sentence greater than that which the lower court can impose. But in each case the last word is with quarter sessions; that court can order detention in a borstal institution or can pass a heavier sentence than could the magistrates' court, as the case may be, but it is also within their powers, in each case, to deal with the offender in any manner in which he might have been dealt with by the summary court.

A case in which the latter course was followed is reported in *The Western Mail* of February 5. A soldier was charged with and pleaded guilty to stealing a car, stealing a pair of binoculars, driving while disqualified (an offence calling, in the absence of special reasons, for imprisonment), driving whilst uninsured, assaulting the police and wilfully causing damage to a cell. The car was found stuck in the mud in a side road and the defendant said "I was going to smash it against the wall, but I got stuck in the mud." He was committed to quarter sessions for sentence, presumably under s. 28, *supra*. At quarter sessions he was placed on probation for two years and was told, according to the report, by the learned chairman that there was no reason why he should not become a good soldier and a credit to the Army. There would appear to be room for considerable improvement in his conduct, if what happened on the occasion in question was at all typical of his general behaviour, before these results will be achieved, but there must have been information available to the court, which does not appear in the report, to indicate that under discipline, and if he learns his lesson from his experience on this occasion, he is likely to be able to show that his conduct then will not be repeated. In any event if within the two years of his probation he is brought back before the court under s. 6 or s. 8 of the Criminal Justice Act, 1948, he may find the court disposed to take a very different view of the matter.

Missing the Bus

Truancy from school is nothing like the problem it used to be, and when a child is persistently absent the cause is more often than not some default on the part of the parent or some abnormality about the child in his attitude to school or to life in general—"maladjusted" is perhaps the right word.

A report of the West Riding Education Committee, quoted in the *Manchester Guardian*, describes a new kind of truancy, or at least new to us. In rural districts where there is a bus to take children to school it is not uncommon for those who have missed the bus to go home, and from this has developed a practice among some children, it is suspected, of missing it intentionally. As in many other fields, intent may be difficult to prove, but may be inferred from conduct, and so no doubt the school authorities will sort out those children who may be considered to be missing the bus on purpose and will deal with them and their parents as may be appropriate.

In general it is found that there is more irregular attendance on the part of girls than boys, for the fairly obvious reason that girls are found more useful in the home. This is rather hard on those girls who want to make the most of their opportunities of education, and parents ought to realize this and not stand in the way of their daughters unless unavoidable emergencies make it necessary at times.

Lorry Drivers and Increased Speed Limits

The *Manchester Guardian* published on February 2 an article dealing with certain aspects of the proposed increase to 30 miles per hour of the speed limit for goods vehicles which are restricted at present to 20. The first point worthy of mention is that the drivers do not accept that an increase in the speed limit would increase road deaths, their view being that a responsible driver (and we think it can be said in fairness that heavy lorry drivers as a class are responsible drivers) would drive just as carefully if there were no speed limit at all. Against this it can of course be said that if an accident does happen even with a careful driver because of someone else's carelessness, the greater the speed the greater the risk of serious results.

But the main concern of lorry drivers, according to the article, is with the possible effect on their time schedules of an increase in the permitted speed of their vehicles. It is said that in the past they have been expected to average 16 miles per hour on their journeys without exceeding 20 miles per hour, and it is claimed that this is impossible. It will be equally impossible, it is claimed, to average 24 without exceeding 30. The result of a schedule which calls for too high an average speed is, so it is alleged, that drivers have for years been exceeding their permitted speed limits in order to maintain their average speeds.

A contrary point of view is that when too low an average is fixed drivers have been able to reach their destinations before they should have done and, (from their employers' point of view) to waste the time so saved. A method of checking this practice is to fit to the vehicle a clock which goes only when the vehicle is travelling and any time saved on the journey thus becomes apparent.

We should perhaps point out that if it is alleged that a schedule is published or issued or directions are given by an employer under which a journey is to be completed within a time which is impracticable unless a speed limit is exceeded ss. 10 (6) and 10 (5) of the Road Traffic Act, 1930, are in point. The publication or issue of the schedule or the giving of directions are *prima facie* evidence that the employer procured or incited his employee to commit an offence under s. 10 and the employer, if convicted, is liable to the greater penalty provided by s. 10 (5).

Road Safety Grant

The Ministry of Transport seem never to have liked para. 11 of the first Report of the Local Government Manpower Committee which states: "... we have accepted the general principle that all actual expenditure incurred for the purpose of a grant-aided service should be admitted for grant, irrespective of whether it relates to work which is decentralized and carried out in a separate department for that service or is carried out centrally in one of the general administrative departments of a local authority."

The Ministry managed to secure the exclusion of highway grants from this sensible agreement: the Report at para. 15 says:—"Although in other services the charging of the overheads of the cost of works has usually been found to provide the appropriate way of obtaining a basis for grant, in this case grant earning expenditure has always been confined broadly speaking to the cost of works on the site. All establishment expenses and overhead charges at stores and depôts have been excluded. The local authority representatives consider that an appropriate charge for those overhead expenses, which are in the nature of works on-cost, is a proper item of expenditure to include as part of the cost of works. The rates of grant were, however, recently increased after consultation with local authorities on the understanding that the existing basis would be continued . . ."

It is possibly quite wrong to deduce that the Ministry attitude was that, whatever other departments might have done, they had never admitted eligibility ot central administration charges to rank for grant and did not intend to do so in the future. It is a possibility.

We are nevertheless intrigued by the contents of circular No. 730, dated January 16 last, from the same Ministry, pronouncing on what items of expenditure will and what items will not be admitted to rank for grant in respect

of the road safety activities of local authorities. The circular makes it quite clear that no proportion of central administration expenses will be accepted, and that in relation to office accommodation no proportion of the cost of rent, rates or repairs will normally be accepted and that claims for grant in respect of additional heating, lighting and cleaning of accommodation made available for road safety staff will only be admitted, if at all, after individual and detailed examination.

The grant for road safety work is at the rate of 50 *per cent.*, a figure which is of course a normal one for many services—and central administration expenses are admitted for grant on all these other services. Only the Ministry of Transport is out of line, and the possibility of which we referred above is, we are therefore driven to believe, an improbability.

If the Road Safety grant is merged into the general grant referred to by the Minister of Housing and Local Government in his statement to the Commons on February 12 last, pinpricks of this kind may be eliminated.

Proof of Adultery

It may seem illogical for a court to find that A has committed adultery with B, but not to find that B has committed adultery with A. The lawyer knows that this may happen for several reasons. An admission by a respondent may be sufficient evidence, in all the circumstances of the case, to satisfy the court that it is true, but it is not evidence against a co-respondent, who may have denied the adultery or have remained silent knowing that there is no proof that can be adduced to satisfy the court.

Another aspect of this question is that adultery is a consensual act, and a person who has not consented to the offence is not guilty of adultery, though the other party who was the wrong-doer is guilty. A woman who has been raped is not an adultress.

The most recent case on this subject of consent is *Barnett* v. *Barnett and Brown* [1957] 1 All E.R. 388, before Mr. Commissioner Temple Morris. The respondent was alleged to have had intercourse with his wife's sister, the intervener in the suit, an infant, at a time when she was 12 years old. The learned Commissioner was satisfied with the evidence of this, and found the respondent guilty of adultery, but he dismissed the intervener from the suit as not guilty. He reviewed the law on the age of marriage and of consent to carnal knowledge, and held that as adultery was a consensual act and this girl was in the eyes of the law incapable of giving consent to intercourse, she could not be said to have committed adultery.

The Roast Beef of England

Most local authorities allocate contracts for the supply of meat to their schools and other premises purely on the basis of tender prices. The *Meat Trades' Journal* of January 31, however, records an event at Moreton-in-the-Marsh consisting of a "trial by roast" which may cause the authorities to think again.

This experiment proceeded as follows. Three joints of thick beef flank, one English, one Argentine chilled and one Australian frozen, each weighing exactly 6 *lbs.* 5 *ozs.* were prepared and roasted in the kitchens of Moreton's "White Hart" under a guard of newspapermen. An unexciting and lengthy vigil of this sort must have been wholly irksome to the active gentlemen of the press and no doubt a suitable system of watchkeeping was operated: be that as it may we are assured that supervision was continuous and close. At the proper hour (which conveniently happened to be 7.45 *p.m.*) the hotel manager brought the joints out of the oven to be weighed and the result is summarized in this table:—

	Weight of Raw Meat		*Cost per lb.*		*Weight of Joint Cooked*		*Cost per lb. Cooked*	
	lbs.	*ozs.*	*s.*	*d.*	*lbs.*	*ozs.*	*s.*	*d.*
Home killed	6	5	4	0	3	12	6	9
Argentine chilled	6	5	3	9	3	5	7	2
Australian frozen	6	5	3	0	3	14	4	10½

Incidentally it will no doubt shock many people to realise how much meat is lost in cooking and as the editor of the *Journal* wryly says: "Some traders may look askance at any report which reminds the consumer of the relative weights before and after oven."

Too much value should not be attached to one experiment, of course, but if further tests showed similar results it would seem that as regards the bettter qualities of meat the best is indeed the cheapest. At any rate there is something here worth the attention of local authority catering officers.

Another question concerned with meat but not with Moreton is whether it is better to buy meat ready boned or with the bone in. The prices are of course widely different and there are certain obvious advantages and disadvantages of each method. No general pronouncement on the subject has come to our notice but in view of the quantities of meat purchased by local authorities, particularly by the counties and county boroughs, and of the differences in price per pound, this is another matter where detailed study and investigation is likely to prove rewarding.

Next Round at Oxford

At p. 18, *ante*, we set out the purport of the writ served on the Minister of Housing and Local Government on behalf of the Dean and Chapter of Christ Church. The writ claimed a declaration that the Minister's letter of September 21, 1956, to the city council of Oxford was not a direction with which the council were bound to comply, and that the Minister could not lawfully amend the council's development plan in accordance with the proposals contained in that letter. It had struck us, immediately upon reading in the newspapers what was the relief claimed by the writ, that the Minister's letter of September had not purported to be an enforceable direction, and that it was strange that anybody should suppose this to be its effect. We could not, however, make this comment while the writ was outstanding. It remains a mystery—despite a dissertation on what is meant by "tantamount" in letters in *The Times* of February 22 and 26.

The writ has now been withdrawn; a letter in *The Times* of February 12 from the Dean of Christ Church gives the reasons. Once it was admitted on the Minister's behalf that his letter of September was not a direction to the council, this disposed, according to the Dean's letter, of two-thirds of the ground for their issue of the writ. Beyond this, they were influenced towards withdrawing it by the change of Ministers. They believed that Mr. Sandys had so fully committed himself to the Meadow Road that he could not fairly judge any further proposals submitted to him by the council, but Mr. Brooke had not been personally concerned with the council's unsuccessful proposals of last year for the inner relief road by way of the Lamb and Flag, and had not had occasion to express any view in public upon the Oxford traffic problem. He might, therefore, be expected to bring a fresh mind to the problem and to deal with it in judicial fashion.

We hope it is legitimate to say that the change of Ministers gave Christ Church a convenient opportunity to take back a doubtful move. Had the case proceeded, counsel for the Dean and Chapter would have been in the

quicksands of the *Stevenage* and similar cases, cited in our earlier article, and proceedings on the writ could not, as we see the case, have carried things much further, even if the desired declaration had been granted by the court. The same may be said of the proposal for a Royal Commission, which was put before the House of Lords on February 13 by Lord Beveridge, with strong support from other peers associated with the University. The issues raised are, we agree, important enough to justify a Royal Commission. We cannot express them better than was done by Dr. Thomas Sharp, in the passage quoted at the end of our former article, but, for reasons we gave at p. 20, *ante*, the Government rejected the proposal. A Royal Commission could not do more than impose delay, because in the last resort the Minister must exercise his constitutional duty, and the statutes already provide for a public inquiry—which is a different process from investigation by a Royal Commission. As so often happens in the House of Lords, Lord Beveridge did not press his motion to a division, but it gave the opportunity for an undertaking by the Government which went some way to satisfy their critics, and was cautiously welcomed by the Dean of Christ Church in a statement published in *The Times* of February 14. This undertaking was that upon the receipt of fresh proposals from the city council the necessary public inquiry should be held by an independent person—as we have more than once suggested. The Government went further, and undertook that the report of the inquiry would be published; again something which (in connexion with the Oxford roads and also more generally) we have advocated upon the precedent of what is done under the Road Traffic Acts by the Minister of Transport and Civil Aviation.

In her evidence before Sir Oliver Franks's Committee the Secretary of the Ministry of Housing and Local Government stood out against the general publication of inspector's reports, for reasons which we need not examine here. Whatever the arguments upon the general question, this dispute about the Oxford roads seems eminently to be one where the public ought to know what the inspector recommends, and the Minister ought to give his reasons publicly, for accepting or rejecting that recommendation.

THE MAGISTRATE AND THE "SHORT, SHARP, SHOCK"

By GORDON ROSE

Speaking about detention centres at a meeting of the Howard League for Penal Reform in October, 1954, the Home Secretary referred to the régime as being intended to provide a "short, sharp, shock." The phrase is one which has been used frequently in recent years in connexion with this form of treatment (or dare one say "punishment"?), and sometimes also in connexion with attendance centres. The two methods of dealing with offenders are of recent origin, both deriving from the Criminal Justice Act, 1948. The detention centre is an institution providing a brisk and vigorous routine lasting not more than six months maximum, but generally only three months (less remission). It caters for those in the 14–21 age group who the magistrates may think are in need of it. The attendance centre, nominally for 12–21, but in practice 12–17, provides the same kind of régime without removing the offender from his home. He is required to attend on Saturday afternoons, until he has served a maximum of 12 hours altogether. Both ideas are new to this country, though not without precedents, but the idea underlying them is certainly not new.

The theory of the short, sharp, shock is, in fact, one of the oldest of all theories of punishment. The age old deterrent for the naughty child is some sort of punishment, generally of the slipper or hair-brush type. It is only very recently that we have stopped beating our children as a matter of course, and, while public opinion is now very much against it, the sound thrashing is still administered in some circles, and remains an article of faith in others. The official beating of young offenders has also lost ground rapidly in the last 50 years or so, and was completely abolished in the 1948 Act. It has been much abated in the educational system since the great days of the dominie and his tawse. Informed opinion became convinced in the period between the wars that, as John Watson wrote in 1942, "it is one thing for a normal child coming from a good home to be beaten by his father whom he loves, or by his schoolmaster whom he at least respects. . . . Quite a different thing is a judicial beating, a long time after the offence, by a policeman who is a complete stranger" which, he said, merely intensifies the "cuff-on-the-ear" principle of child training, a method which so easily becomes a "knock-his-block-off" principle in the adult so trained. Furthermore, it made the child into something of a hero amongst his fellows, and an object of sympathy in the neighbourhood.

A parallel development in the sphere of reform was the gradual limitation of imprisonment for juveniles. This was abolished for all under the age of 14 by the Children Act, 1908, and the age was raised to 15 by the 1948 Act (17 in courts of summary jurisdiction), while the provisions inserted in 1908 to discourage the committal of minors to prison by magistrates were strengthened in 1948. The 1948 Act quite clearly envisages the complete abolition of imprisonment for anyone under 21, although this will take some time to accomplish. The crux of the matter is the question of alternative methods of treatment.

In spite of continued emphasis by psychiatrists upon the complex motivations of delinquency, and the general acceptance of reformative methods in dealing with offenders, judicial opinion has throughout remained convinced that there are naughty children who do not require prolonged training, but who do need punishment to bring them to their senses. (To some degree the magistrates have been educating the psychiatrists in this respect, and there is a much more realist attitude abroad than used to exist in psychiatric circles.) This belief made it imperative to provide some kind of alternative to imprisonment for short periods, which, it was increasingly felt, only served to convince young offenders that prison was not such a bad place after all. Humanitarian and reformist influence succeeded in removing the harsher aspects of prison life early in the century, and a belief that loss of liberty is the only justifiable punishment and that conditions within prisons should be constructive in all other respects tends to minimise the effect of short sentences, within which little constructive influence can be brought to bear.

The provision of alternatives to imprisonment was held up between the wars both by the need for economy, and the attitude of the Departmental Committee on Young Offenders, 1927, which did not see how a detention centre could be both punitive and constructive at the same time; but the success of short term approved schools tended to nullify this opinion. A provision in the 1908 Act permitting punitive detention in an approved place up to 28 days was very little used until the 1933 Act provided remand homes as a suitable place of detention. The success of this method, still in use until detention centres become generally available, is in some doubt. J. H. Bagot, in a study published in 1942 found a failure rate of 37 *per cent.* for first offenders, and 54 *per cent.* for recidivists in a group of discharges from the Liverpool remand home. This suggests that the major factor in the results is the selection of appropriate candidates by the magistrates, an obvious enough difficulty if one thinks about it for a moment. Dr. Grunhut's recent preliminary examination of the first results of the Kidlington detention centre leaves one with the same impression.

If, however, a great deal depends upon an accurate analysis of the offender's individual problem, and prognosis of his probable reaction to the short, sharp, shock type of treatment at the time of his court appearance, we are brought back again to the problem of the intention of this method of dealing with him. It is clear that physical violence is not intended, since this has been definitely rejected by public opinion. On the other hand we presumably intend some sort of punishment, for, obviously, nothing very much in the way of retraining can take place in some three months at a detention centre, or 12 hours at an attendance centre. Furthermore, the orientation is towards making life rather uncomfortable for the boys concerned. At both detention and attendance centres, fatigues, P.T., and generally "looking pretty sharp" are the order of the day. This is, I suppose, a form of retraining, but it is not what is generally understood by the word.

Presumably, therefore, the predominant intention is that the offender should heartily dislike the whole operation. Not only does he lose his liberty for a short time, but he ought to leave feeling that if he never saw the place again it would be too soon. The punishment is not only in the loss of liberty, but in the treatment method itself. But this raises a difficult problem. We are all too conscious of the fact that fear induced by severe punishment may only lead to resentment and bravado and thus to further crime, and even if we were not, public opinion would not countenance any considerable severities. The aim must therefore be not only to inculcate fear of the consequences of crime, but to limit the fear to that which may be born without giving rise to a sense of injustice. The boy must feel that he has experienced a just punishment which he brought upon himself, and that those who impose it are not against him, but against only that part of him which does things which are wrong. The warden of such a centre must appear as the embodiment of the boy's own conscience, meting out just punishment for sin, and rewarding the repentant sinner.

The régime thus needs to be delicately balanced between punishment and encouragement. It should hit hard but not too hard. The need for a constructive side is always present, and is reinforced by the exigencies of staffing. One needs men with real sympathy for the boys, but capable of making them jump to it—the good sergeant-major type springs to mind as the sort of person who might do the job well. Such men need to feel that they can produce something rewarding out of the work; that they have been the instruments whereby boys have been introduced to a wider and better life. They are also likely to have boys' club experience, and will wish to see their charges introduced to a socially acceptable way of spending leisure. Further, they would like to feel that their efforts are being continued by someone else, which leads to a demand for the association of probation with detention and attendance centres—an association obviously not intended in the Act. So far as attendance centres are concerned, there is also a demand for an extension of the number of permitted hours, so that the first phase of severe handling can be followed by periods increasingly devoted to club activities. I am inclined to feel that this is unwise, and a better solution would be the further freeing of the officers concerned (they are nearly all police officers) to co-operate with the probation officer in looking after their boys subsequently.

What are the implications of the theory of the short, sharp, shock, as outlined above, for the magistrate? Clearly, if conscience is to be appealed to, a certain tenderness in that sphere in the offender is desirable. One presumably wants to look for the type of boy who is comparatively green in the field of crime, not so green, of course, that all he needs is a 10*s.* fine and some sharp remarks from the bench, but green enough to be impressed by the constructive severity of the treatment. This surely rules out completely the ex-approved school boy; and probably any boy with any considerable experience of institution life ought not to be sent to a detention centre, to avoid watering down the impact. One does not want a mounting crescendo of punishments, but a short, sharp, shock. The boy concerned ought presumably to be impressionable, and we ought not to be afraid of producing a lasting impression on him. He ought not to be, in any real sense, a maladjusted boy, since maladjustment takes time to eradicate and needs some kind of treatment involving prolonged training. He ought to be primarily a "naughty" boy, which implies a mild and adjustable condition.

It is prescribed in the Act that, in the case of detention centres, all other forms of treatment except imprisonment should be considered first, but this does not mean that the detention centre is a last resort. The greatest danger in respect of any kind of punishment is that it appears to "balance" the offence, and that it tends to provide an emotional satisfaction for the person who pronounces sentence. If retribution and deterrence are, in general, abandoned as a basis for dealing with the young offender, as we hope they are, it becomes incumbent upon the sentencing authority to suit treatment to the offender. A committee of the Magistrates' Association has recently emphasized the importance of remanding a boy for report before deciding to send him to a detention centre. Perhaps even more than in any other type of treatment, it is of great importance that the choice of the short, sharp, shock as the method appropriate to a particular offender should be a deliberate choice after full investigation. The attractions of "bringing him to his senses" are great, and the harassed magistrate, often inadequately served with expert advice, and faced by a constant stream of difficult cases may be inclined to succumb.

The theory of the short, sharp, shock imposes a responsibility for selection of the appropriate case which is as great as that the magistrate bears in respect of probation, or Home Office school. Indeed, it is heavier, for the probation officer is able to vary his casework method to suit each case, and there is an allocation process to be gone through before the offender reaches his school or borstal. In the short, sharp, shock treatment, there is very little room for variation, and

therefore the magistrate has little room for error. This, of course, merely underlines the importance of providing the magistrate with the very best facilities for reporting while the child is on remand, and any extension of the short, sharp, shock method should go hand in hand with improvements in the availability of expert advice in remand homes. Further, the remand centres (which would provide expert observation for certain categories of offenders) made possible by the 1948 Act have not materialized and show no signs of doing so. The intention of an Act can all too easily be distorted by failure to bring parts of it into operation—witness the National Health Service Act and health centres, and the Education Act and county colleges. It would be a pity if this part of the Criminal Justice Act were to suffer a similar fate.

THE MASTER'S INSURANCE AND THE SERVANT'S NEGLIGENCE

By C. W. L. JERVIS

One ventures the opinion that the average servant of a local authority or any other employer will express surprise, if not alarm, at the recent decision of the House of Lords in *Lister* v. *Romford Ice Co., Ltd.* [1957] 1 All E.R. 125. In short, the House decided, by a majority, that an employer is entitled to recover as damages from his servant the sum paid by the employer to a person injured by the negligent driving by the servant of the employer's vehicle. The average servant would say that his employer would never stoop to taking such an action, forgetting the important insurance principle of subrogation. Denning, L.J., put the position simply and cogently when *Lister's* case was before the Court of Appeal [1955] 3 All E.R. at p. 467: "Take this very case where the insurers issue a writ in the employer's name against the servant without consulting the employer or the servant beforehand. When the servant receives the writ he will take it to his employer and say, 'Why are you suing me? Surely you have got the money from your insurance company, so you cannot sue me.' This natural comment between master and man throws a flood of light on the implied understanding of the parties." Unfortunately, whatever may be the implied understanding in fact between master and man is it now settled that there is in law no implied term of a contract of service whereby, if the employer is insured, he will not seek to recover contribution or indemnity from the servant.

The facts of the case are simple. The Romford Ice Company employed Lister junior to drive their lorry, who in so doing, ran into and injured his father, who was also employed by the Company. Lister senior obtained judgment for damages for negligence against the Company, whose insurers, without consulting them, brought an action against Lister junior for damages for negligence or breach of contractual duty to take care. The accident happened in a slaughterhouse yard. When the case was before the Court of Appeal [1955] 3 All E.R. 460, Birkett, L.J., held and Romer, L.J., appeared to hold, that such yard was not a road within s. 35 (1) of the Road Traffic Act, 1930.

All the Judges, both in the House of Lords and the Court of Appeal, were of the opinion that it was an implied term of his contract of service that Lister junior should drive his master's lorry with proper care. Both in the House of Lords and in the Court of Appeal the Judges were divided upon the question whether the contract of service also contained an implied term that Lister junior was entitled to be indemnified by his employers against claims or proceedings for acts done in the course of his employment or that he was entitled to the benefit of any insurance which his employers had effected or should have effected.

In the course of his dissenting judgment in the Court of Appeal, Denning, L.J., held that there was an implied term of the contract of service whereby, if the employer was insured, he would not seek to recover contribution or indemnity from the servant, and accordingly no action lay. "If and in so far as the claim rests in contract, which I dispute, it is defeated by the implied term which I have just mentioned. If and in so far as the claim rests on the statute (*i.e.*, Law Reform (Married Women and Tortfeasors) Act, 1935) it comes within the express power of the Court 'to exempt any person from liability to make contribution.' This seems to me to be an appropriate case in which the Court should exercise this power. Whichever way it is put, however, I am clearly of opinion that an employer, who has been fully indemnified by his own insurance company should not be allowed to turn round and sue his servant for a contribution or indemnity."

In his dissenting judgment in the House of Lords, Lord Radcliffe pointed out that the motor vehicle policy of the employers took "what is certainly not the uncommon form of including a 'Third-Party Extension,' the effect of which was that the driver was equipped with his own direct right to call for indemnity from the insurers if he became liable to a third party for damages caused while driving the respondents' lorry. I must call attention to this last point, because it illustrates the almost intolerable anomalies which are involved in the respondents' argument. The situation is this. If an accident takes place through negligence, the person injured can sue either employer or employee or both of them. If he sues the employee alone, the latter calls on the insurance company for the cover which the employer has bought him; the insurance company has to provide the fund of damages required—but if the injured person takes a different course, one which neither employer, employee nor insurance company can control, and sues the employer either alone or jointly with the employee, the position of the employee is, apparently, much worse and the position of the insurance company, apparently, much better. For now the latter can indemnify itself for the money it finds by getting it back from the employee in the employers' name and the former, instead of getting the benefit of the insurance which his employer was to provide, is in the end the one who foots the bill."

The facts were, of course, somewhat unusual. We are not told the whole story of the employers' insurance cover. We do know they had both an employers' liability policy and a motor policy for the lorry. It appears that where the employers were not indemnified under the motor policy, perhaps because the injury was to a fellow servant and not on a "road," the employers' liability policy covered the gap.

From the case, it is submitted, two practical lessons emerge:

(*a*) A prudent employer who does not desire his servant to be sued by subrogation will place all classes of his insurance with the same company, and

(*b*) A prudent servant who does not desire to pay damages out of his own pocket will expressly stipulate that he is to have the benefit of any insurance his employer may effect.

CLOSURE AND DIVERSION

The issue for January of the *Journal of the Commons, Open Spaces, and Footpaths Preservation Society* contains two articles on the closure and diversion of public paths. Some of our readers will have received this publication as subscribers. Those who have not can be recommended to obtain a copy, for the articles embody a convenient and valuable summary of the present diverse legal methods of closing and diverting highways in general and footpaths in particular. The first article is entitled "A Criticism of the Law." The second begins an analysis in detail, which is to be continued in the February issue. It will be necessary to use both these monthly issues together, because the notes to the first part (which run up to the number 71) are to be printed in February. The first purely critical article points out that there are some 20 possible procedures, although for practical purposes not many of these have to be applied. Among the procedures which are regularly used the Society thinks that too many closures and diversions are taking place, partly because of the loopholes in the existing law and the failure of Parliament to establish a uniform and readily understood procedure. Our impression is that the Society is still regretting that quarter sessions has so largely been superseded, as the organ for closing or diverting footpaths, although this note of regret is not sounded so clearly in the present articles as in some others which the *Journal* has published in the last 10 years. On the particular issue of procedure in court or an order of a Minister made after a public local inquiry, we are ourselves convinced that the latter is the better. We say this not in the interests of local authorities, who may be among the most frequent applicants for closure or diversion, but because the cost and formality of procedure before quarter sessions must often deter private persons from asserting what they believe to be ancient rights.

Under some of the new statutory procedures, the appropriate Minister has, we believe, no power to make an order as to costs; his own costs of the inquiry and investigation by his officers therefore fall upon the taxpayer. Local government officers who have to present the case for a closure or diversion, which sometimes involves a trifling inconvenience and sometimes even means better public facilities for getting from place to place, may be exasperated when an inquiry held in the evening in a village school is drawn out, while a government inspector listens to the repetitive unsworn testimony of a succession of oldest inhabitants, eagerly seizing the opportunity to qualify as village Hampdens, without having to consider who will pay the costs. Nevertheless, proceedings of this sort, which could hardly take place under the older procedure of an order of quarter sessions, are valuable because the villagers can see that trouble is being taken on a Minister's behalf to ascertain their point of view.

Where we do decidedly agree with the Society is in deploring varieties of procedure which have come about by accident. These relate to such matters as the type of public notice to be given, of the holding of the inquiry by an official or a non-official person, and the period of notice. We have called these accidental differences and they spring, as the January issue of the Society's journal points out, from the fact that interference with public paths or other highways was not the primary purpose of the authorizing statute. The Highway Act, 1835, set up a standard procedure, the sole purpose of that Act being to deal with highways. What is needed under the modern Acts seems to be for Whitehall to think out a new standard procedure which should be incorporated into all of them. This surely ought not to be difficult.

It might be more difficult to enact that ministerial orders of this sort should always be made by a single Minister. At present there is the curious anomaly that some are made by the Minister of Housing and Local Government and others, even under the Town and Country Planning Acts, by the Minister of Transport and Civil Aviation. We have no decided preference as between these Ministers, but we should have thought that uniformity of decision and settlement of principles might be helped if one or the other were entrusted with the work. Whether or not this be done it is clearly desirable that the rules of the game shall be made the same (whoever is to be the umpire), in the interests of those affected, who are typically persons in a humble station without much understanding either of procedural formalities or of the policies which lead to depriving them of long established rights.

MISCELLANEOUS INFORMATION

SENTENCING POLICY

We are indebted to the Rev. W. J. Bolt, B.A., LL.M., for the following:

Saddening as it is to notice how our own country lags behind the United States in the promotion of criminal science, there are occasional signs that our scholars are furthering the frontiers of inquiry. One such issue, on which both public and private attention is now being focussed in our midst, is "sentencing policy," that body of learning which contemplates the principles which do or should guide the criminal courts in the imposition of sentences.

American criminologists in their curriculum have given it much prominence over several decades. Great Britain has not yet produced any comparable literature, nor developed a mature body of conclusions on the question; and two years ago, I hunted through our legal periodicals and publications on criminal law, to find when the notion first came within the ken of this island. The earliest investigation I could find, was made as far back as 1890, and in the "J.P." An editorial at 54 J.P.N. 259, is entitled "Inequality of Criminal Sentences," and it consists of a broad survey, which was a remarkable achievement for a writer of 1890, of the principles which ought, in strict justice, to guide the courts in the application of their penal sanctions.

Whether or not that was the earliest word uttered in our shores on so important a function, the topic has slowly attracted increasing attention in Government, professional, and academic circles; and the University of London recently heard the latest word, in a paper read by Miss Jean Graham Hall. Her study was all the more valuable for coming, not from a cloistered pedant, but from one whose growing practice at the criminal bar gives her an intimate and close observation of the working of the tribunals, and I hope that the full text of her study will be given to the world as a publication. It would be of enormous value to all who have any sort of interest in the administration of our criminal law.

Her particular field of study is the influence of the Court of Criminal Appeal on sentencing policy. That tribunal, established by statute in 1907, to hear appeals against convictions and sentences in courts of Assize or quarter sessions, is composed in theory of the Lord Chief Justice and all the Judges of the Queen's Bench Division, with a quorum of three, and Miss Hall had been at pains to examine the constitution of the court over a long period of sittings. In the absence of the Lord Chief Justice, the senior Judge of the division—it is now Mr. Justice Hilbery—usually presides. Only one judgment is delivered, and if the lower court has not imposed the maximum sentence for the

offence for which the appellant has been convicted, the C.C.A. may increase as well as decrease the sentence imposed. After reading so many of its judgments, Miss Hall had found a divergence in its objectives. Sometimes it seeks to lay down principles of policy, and, at other times, it showed a marked disposition to leave the trial Judges to their own decisions. She had explored every reported case from 1948 onwards, including cases which were in appearance appeals against conviction but where issues of sentencing had arisen.

Again and again, the court said that if they had been considering only the issue of sentence, they would have acted in a particular way, an obiter dictum which recalled the method of the Roman edict.

She had examined the Daily Cause List for the year 1953, to see whether the personnel of the court was stable or floating; and in that year, of the 16 Judges eligible to sit, the Lord Chief Justice had sat 48 times, and Mr. Justice Parker, the puisne Judge who had sat most frequently, 19 times. It is substantially the court of the Lord Chief Justice, and it is he who pronounces judgment most often. She had looked into " Who's Who " to discover something of the antecedents of the Judges who had sat in the C.C.A. in 1953, and, according to that work of reference, 11 of the Judges had had judicial experience before their elevation to the Bench—they had been recorders in provincial towns. Lord Goddard himself had held three recorderships. So most of them had had some experience of sentencing before becoming members of the court, and one, Mr. Justice Byrne, had been prosecuting counsel for the Crown at the Central Criminal Court. Three who were Judges in 1953, Messrs. Justices Barry, Lynskey, and Ormerod, were not disclosed in " Who's Who " as having held recorderships previously, but all Judges of the division gain experience of sentencing when they go on circuit. She had found two reported cases when the Judge in the court of first instance had sat also in the Court of Criminal Appeal, but the statute which created the Court, had not forbidden this.

Miss Hall next considered the possible means by which the Judges who constitute the Court, inform themselves of the material on which their sentencing must be based. Undoubtedly, they discuss sentencing policy with their brethren—there is much consultation which the public does not see. They presumably hold meetings with the Prison Commissioners, a procedure encouraged by the Criminal Justice Act, 1948. There is no evidence to indicate whether they visit penal institutions. They have the notes of the trial Judge at their disposal, and receive the reports of medical experts and probation officers. In her experience, the higher courts show more courtesy than lower courts in listening to expert evidence. And of course, they have access to the earlier decisions of the C.C.A. She quoted a case of 1950 where the Lord Chief Justice said that he saw no reason why he should not re-consider one of his earlier decisions.

But there is no formal training in sentencing. The Judges may have the bias of their own background, but within a narrow sphere, they are extensively well-informed.

How effective are the Court's decisions in levelling out sentencing? Its judgments are, as it were, edicts issued from time to time, in which the Judges say, literally or virtually, " We hope that these considerations will be borne in mind in future "; on one occasion, they specifically referred a deputy-chairman of a court of quarter sessions to the ruling they had given on a former occasion. In a leading case, where no sentencing issue was involved, they cited an earlier ruling of theirs on sentencing, disclosing what they had learnt from the Prison Commissioners.

The C.C.A. builds case-law on the statutes. As a gloss upon the provisions of the Criminal Justice Act, 1948, the Lord Chief Justice had laid down that, except for an old man likely to die in prison, the sentence of preventive detention imposed should be for seven to eight years. Here, the Court has reduced the fear inspired by the Act; and, in practice, Miss Hall finds that very few sentences of preventive detention are imposed for less than eight years. The 1948 Act stipulated that sentences of corrective training should be from two to four years. The C.C.A. had laid down that this might result in a sentence of only one year four months, and that they considered that the sentence should be between three and four years. In this way, the Court was virtually altering the substance of the law.

The Court looks with a firm eye on technicalities, and readily makes formal defects the pretext for reducing or quashing sentences. Miss Hall quoted a remark in one judgment, " I do hope the courts of quarter sessions will take notice of what this Court has said." The C.C.A. had ruled that when the Commissioners merely report that an offender is " suitable for corrective training," the lower courts must take this as meaning only that the offender is " not unsuitable " and must not sentence him as an automatic consequence. It may be a consequence of this ruling that sentences of corrective training had subsequently declined for the category of offenders whom the Commissioners had diagnosed as unsuitable. Miss Hall's statistics suggested that the rulings of the C.C.A. slowly filter through to the courts of quarter sessions. But she saw the difficulty of dogmatising about such statistics. Sentences of corrective training are rarely the subject of appeal; and here it is a matter of speculation how far the Court's rulings are an influence.

She thought it a defect in our legal system that we have no central reviewing authority. Her examination of the statistics of the borstal institutions disclosed that, where the Prison Commissioners pronounce an offender to be " unsuitable," only three *per cent.* of the appeals succeed. She suggested that these decisions of the Commissioners were a fruitful field for research.

She credited the C.C.A. with achieving an eye for detail and an eye for uniformity. It has also established a respect for the Prison Commissioners' reports, and some degree of equality in corrective training. The Court must also be credited with achieving a substantial reputation for common sense. Lord Goddard had ridiculed the imposition of a sentence of two years for an attempted suicide.

Miss Hall also praised the C.C.A. for achieving immunity from vindictiveness in its handling of homosexual offences. She noted a development in the last two years, a trend to reducing long sentences. She noticed the same tendency in cases of attempted suicide and homosexual assaults.

She had also seen a reflection of the Court's influence in the instruction issued to prosecuting counsel. Nowadays, counsel for the Crown were required to acquaint themselves with many new factors about the accused—age, previous convictions, employment, date of arrest, the date, if any, of his last discharge from prison, and what he has been doing since.

Miss Hall's conclusion was that the C.C.A. is animated increasingly by a desire to see justice done; and this year, the Court has thought it necessary to complain that courts of quarter sessions are taking its words too seriously. She expressed her opinion that vague trends which are now discernible, are sociological rather than legal. It was a tempting line of speculation, which she had not time to pursue, how far the tendencies discernible in the Court's judgments, can be correlated with the identity of the particular judges who composed the Court at the time.

The second trend which deserves notice, is the considerable tightening up of technicalities. She cited in illustration, the increasing fastidiousness over the procedure of identification.

Also, habitual petty thieves are not being sent for preventive detention in such numbers as in 1951, unless the offender is a hardened criminal who cannot be sent for so long a period of imprisonment as of preventive detention. This was not envisaged by the 1948 Act for offenders with a long record of convictions for petty thieving. The Courts are now feeling their way as to what is the best thing to be done with this class. So far as she could discern a " mind " in the C.C.A. Miss Hall mentioned a feeling for a central depot for sentencing.

But she had recently noticed a tendency to consider the offence rather than the offender, as the most important factor in sentencing. She thought that if the Prison Commissioners submitted reports that are worth-while, the C.C.A. would be disposed to follow it. The judiciary is edging towards a more sociological outlook, but the Commissioners are not adapting themselves to the change. She thought that the C.C.A. had become amenable to the policy of hearing the opinions of non-legal experts who can be respected.

In expounding this point, Miss Hall expressed the conclusion that the work of the C.C.A. would be much more effective if present arrangements for after-care were more adequate.

VISITING FORCES

By the Visiting Forces Act (Application to Colonies) (Amendment) Order, 1957, (S.I. No. 103) the existing order (S.I. 1954 No. 636) extending the Visiting Forces Act, 1952, to colonies, is amended.

REPORT OF THE DERBY CHILDREN'S COMMITTEE

In this, the seventh annual report, Miss J. Kirk, the children's officer, records what she describes as stimulating changes and contrasts. " Looking back to 1952, the first year national figures were published, there has been a dramatic drop of 24 *per cent.* in the number of children in public care in Derby. Over the same period the numbers in England and Wales had increased by four *per cent.* For the midland region the increase over the four years was five *per cent.*" The recent drop in numbers in the borough has, however, occurred in a year of increased activity. This fact would seem to indicate that the policy of keeping families together, improving the home, rather than receiving and keeping children in care, is meeting with success. A statistical table showing results of investigations of family circumstances of children said to be in need of care or protection, fully bears this out. Moreover: " In addition to the problems which are obviously the concern of the department, the staff find themselves helping with advice either to parents or elder children on difficult family relationships . . . People come daily with intricate and painful problems and all are assured of a sympathetic hearing and any help which can be given." This preventive work is obviously one factor helping to reduce the number of children received

into care. Nothing, says the report, should be done to weaken family ties or to undermine the responsibility of mother and father unless it is absolutely necessary in order to protect the child.

Almost half of the children in care had been committed by the courts. These present a somewhat difficult problem. " Children taken from their parents by a court order and placed in the care of the authority need very skilled handling and guidance having had poor training or poor example at home. Even those boys and girls who were unable to keep out of trouble when they were living at home were extremely resentful of those who had been given the duty of looking after them." It appears that since 1948 many children have been committed to the care of the local authority who would earlier have been sent to approved schools and who have committed serious offences.

There are some interesting stories showing how apparently hopeless cases have after long perseverance on the part of officers of the children's department and others, been turned into successes. In one instance lack of proper accommodation and furniture was at the root of the matter and astonishing and lasting improvement resulted as soon as this was remedied. In another, parental indifference was overcome and a boy who had been in care for many years settled happily with his father.

There are interesting paragraphs dealing with children's homes, the remand home, adoption, foster parents, and after-care. Importance is attached to the after-care work in connexion with approved schools, and the help of the youth employment officer and the welfare officers of local firms is acknowledged.

On the financial side the report states: " Despite a considerable increase in salaries and wages the preventive and remedial work has had its effect in reducing the total costs of the service. . . .

The rise in income which helped to offset certain increased costs is due partly to increased charges for board and lodgings which accompanied wage increases, partly to filling odd vacancies in the Homes by receiving children from other authorities, and partly to a rise in the amounts collected from parents. The national actual amount collected per child in care was 4*s*. 6*d*. a week, the amount collected in Derby in 1955–56 per child in care was 6*s*. 10*d*. a week."

ANNUAL REPORT OF CHIEF INSPECTOR OF FACTORIES

According to the report of the Chief Inspector of Factories for 1955, 188,403 accidents were reported from all premises within the perview of the Factory Acts of which 703 were fatal. The accident rate for adult males was about 26 per thousand. Overall, the rate was the lowest yet received. There has however been a general increase in the accident rate for women since 1953 due to the increased number of women employed in " green labour." The chief inspector raises the question as to whether more could be done by managements to protect the ex-housewife, shop or office worker who finds herself for the first time in a factory against the consequences of her complete unfamiliarity with her environment. There has been some improvement in the accident rates for juveniles but the decline is not, in the view of the chief inspector, sufficient. He emphasizes the need for proper induction, training and supervision. He says that if young persons are transplanted from a relatively sheltered existence into industrial employment without proper precautions being taken against their inexperience, inquisitiveness, or possible propensities to mischief, accidents must inevitably happen for which their seniors are morally and possibly legally responsible.

On the subject of health it is mentioned that medical departments in some modern factories arrange for tests to assist in the diagnosis of cases of ill-health. The younger and the older workers are their particular care. Cases of malnutrition are searched for in younger workers. At one factory these related to cases where the home environment was known to be below normal. As to older workers, it is pointed out that they often attempt to carry on their normal work longer than they should in the interests of their health. In these cases medical examination is directed to extending their working life as long as possible either by some alleviation of working conditions or by transferring them to more suitable work. At one factory where about 10 *per cent*. of the workers are over 50 years the doctor considers 50 to 60 as the age at which there is much scope for preventive medicine, for diagnosing conditions which may easily lead to incapacity or death and for taking action to prevent aggravation of such conditions. At another factory the senior medical officer hopes in the near future to arrange for the periodical examination of all workers of 60 years and over and gradually to include those of 59 and under. Broadly, arrangements of these kinds are only possible in large and medium sized factories. To obtain satisfactory medical supervision in small factories is a very difficult problem.

VISITORS AND TRAFFIC OFFENCES

It is sometimes thought that the police are more ready to enforce traffic regulations in some towns than in others and that accordingly visitors avoid seaside towns where perhaps because of the inadequate parking areas they may be charged with obstruction when leaving their cars on the sea front or in a street nearby. According to the South African " *Municipal Affairs* " this matter is causing dissatisfaction in some towns of the Union and the Chamber of Commerce in one city has asked the town council to show a more sympathetic attitude towards visitors guilty of minor traffic offences. It was stated in justification for the request that in other centres visitors were treated more sympathetically. In Bloemfontein for example, for contravention of a minor traffic regulation a visitor would receive a polite note asking him to be more careful in future. The note also wishes him a happy visit to the town. In another town, in contrast, it was reported in the press that a visitor who had intended to spend three days there left almost immediately because he was being prosecuted for a minor offence. It is of course agreed that serious offenders should be prosecuted but it is thought reasonable that visitors who do not park quite correctly or do not follow the correct way round a traffic island should be treated leniently. The legal correspondent of *Municipal Affairs* comments that strictly speaking, the law is there to be obeyed and every contravention of it should be punished. He suggests however, that the principles of law enforcement with which traffic officers everywhere are so much concerned, admit flexibility—of the exercise of discretion by the police, and of a system of cautions for minor offences. To those who take too rigid a view in these matters, he suggested that the point may commend itself that a flexible and a reasonable enforcement of the law increases respect for it and leads to a more co-operative attitude on the part of the public. He adds " the law must try never even to appear to be ' a hass '."

ROAD SAFETY

Some time ago the County Councils Association objected to a proposal by the Minister of Transport that he should appoint road accident investigation officers. At the last meeting of the executive council of the Association a letter was reported from the Ministry stating that the Minister was convinced that the appointment of these officers would contribute to greater safety on the roads by helping to secure throughout the country a more comprehensive and systematic identification and treatment of accident black spots. He was satisfied that this development not only involves no waste of money or manpower but should ensure that the resources available are used to effect the greatest reduction in accidents at minimum cost. The Association still adhered to the view, however, that the appointment of these officers was unnecessary and that the expenditure of money and manpower involved would better be devoted to the improvement of existing black spots which are already well known to local highway authorities.

Another aspect of road safety which was considered by the Association arose from criticism by the West Sussex county council as to the physical standards by which the Ministry of Transport judge applications to them for the confirmation of orders imposing 30 miles per hour speed limits upon roads in rural areas. The council feel, particularly in the case of the more or less isolated rural community, that the local highway authority have the more lively appreciation of the merits of the particular case and that the Ministry should in such cases be prepared to be guided thereby where there is a reasonable case although it may not have features comprised in the general standard of the Ministry. The Committee on Road Safety, in its 1949 report, recommended that where dangerous conditions exist which can be remedied by measures other than speed limits no speed limit should be imposed. But the West Sussex county council have pointed out that it has not yet been possible to carry out every necessary improvement because of financial restrictions imposed upon road work. It seems, therefore, that in such circumstances there is a strong case for imposing a speed limit until the money for the improvement can be found. In some small rural and coastal communities the main street is very often the only road through the village but apparently it often does not comply with the Ministry's standards for either length or extent of buildings on either side or traffic volume. In many cases the traffic volume is intermittent but heavy in summer and light in winter. It is in these cases that the county council think the Minister should relax his requirements. The County Councils Association has suggested that these matters should be referred to the Committee on Road Safety for consideration.

LOWESTOFT FINANCE, 1955–56

The accounts and statistics presented by Borough Treasurer J. R. Aspinall, A.C.A., show that in this East Anglian seaside resort there has been no change of area or significant change of population during the past eight years, the present population being 43,800. A significant change in rates levied has occurred, however: whereas in 1948–49 the total rate was 23*s*. 6*d*. of which 12*s*. was required to meet county expenditure, in 1955–56 the county figure had risen to 15*s*. 11*d*. out of a total rate of 24*s*. Over the same period the burden of rates per head increased from £7 4*s*. 8*d*. to £8 4*s*. 11*d*—there were, of course, substantial increases in most ratepayers' incomes also.

The result of the year's working was favourable: whereas a deficiency of £37,000 was budgetted for, the actual deficiency turned out to be only £28,000. After bringing in a credit from the income tax suspense account there was a credit balance of £23,000 on the general rate fund revenue account and of £80,000 on the working balance account, against which stores were held worth £40,000 and cash of £55,000. A penny rate produced £1,150.

Rate collection in Lowestoft produced the usual figure of about 96 *per cent.* of the amount levied. In his report the district auditor suggested that the council should review their arrangements for rate collection: he pointed out that two collectors were at present engaged whole-time in making house to house collections from those ratepayers who pay by instalments and suggested that a system of central collection would be more economical.

Like so many similar enterprises the transport undertaking showed a loss for the year: the accumulated deficiency at March 31 was £2,860.

Coastal defence is a matter of continuing importance to Lowestoft and during the year net expenditure falling upon the rates amounted to £19,000 equal to a rate of 1*s.* 5*d.* Contributions in aid are made by the national Exchequer and by East Suffolk county council.

The mayor of a seaside borough is a very busy man and his entertainment bill is correspondingly heavy: in Lowestoft the mayor receives an annual allowance of £500 towards the expenses of his office.

Net housing rents for post war houses vary from 16*s.* 6*d.* to 21*s.* weekly: when rates are added these figures become 24*s* and 33*s.* 3*d.* respectively. There was a deficit for the year on the housing revenue account of £4,800 which was charged to rate fund in addition to the statutory contribution of £9,900.

The fine summer of 1955 helped to swell receipts from the various entertainments and amenities provided by the corporation, the net surpluses from beach chairs, chalets and shops being particularly satisfactory. In aggregate the results of all undertakings showed an improvement of £2,200 over 1954–55.

Loan debt of the borough at the date of closing the accounts amounted to £1,968,000 of which £1,729,000 was for housing. Average rate of interest charged to borrowing accounts was 3·6 *per cent.*

NATIONAL YOUTH EMPLOYMENT COUNCIL REPORT FOR 1955–56

The National Youth Employment Council with its advisory committees for Scotland and Wales, advises the Minister of Labour and National Service on the administration of the youth employment service, which is carried out by education authorities in about two-thirds of the country and by the Ministry in the other third. It is stated in the report issued recently that during the last three years there has been a general acceptance of the value of the service over the country as a whole by employers, teachers, young persons and their parents. Nearly 1,480 school leavers were given individual advice and 1,342,000 were placed in employment, of whom nearly 711,000 were found their first jobs.

The council considers that the calibre of the youth employment officers is the key to the future development of the service and they hope it will continue to attract men and women of high ability with the desire to do a really worthwhile job. On public relations the view is expressed that the best publicity lies in the quality of the service given. Nevertheless, there is a need to inform the public of the functions and, indeed, of the existence of the service. This is done chiefly through the day-to-day contacts of youth employment officers with young persons and their parents, with teachers and employers. Another method is by these officers giving addresses to local employers' and workers' organizations and to other bodies such as youth clubs, parent-teacher organizations and rotary clubs. It is emphasized that success in the giving of vocational guidance depends on adequate knowledge of the boy or girl on the one hand and comprehensive systematised knowledge of employment on the other. After referring to the 66 booklets already issued through H.M. Stationery Office in the " Choice of Careers " series it is stated that the council has also given particular consideration to the use of visual aids in vocational guidance.

In describing the facilities which are available for older school-leavers it is noted with satisfaction that there has been a substantial increase in the number of confidential school reports provided for them, which now cover over 90 *per cent.* of the boys and girls who leave school after the statutory school age. It is urged that the placing of young persons in employment should be regarded as subsidiary to the main function of the service of giving vocational guidance. In practice, youth employment officers may encourage young persons to use their own initiative in following up contacts with prospective employers. Nevertheless, many young persons will naturally look to the service for help in finding employment and the council believes that it is in their interest to do so. Approximately 40 *per cent.* of all school leavers in the past three years obtained their first jobs with the help of the service. In addition a large number of young persons wishing to change their jobs did so through the service.

The Ministry has continued to administer the special aptitudes scheme which enables suitable boys and girls to take a course of training for a skilled occupation away from home. But it has now been made a condition of transfer to any particular area that the young person should not deprive a local boy or girl of an opportunity to take up training. The council is of opinion that this scheme is of the greatest value in assisting talented boys and girls to develop their capabilities. In the eight years since the start of the scheme, 11,131 young persons have been granted financial assistance. The majority of the applications have come from rural areas with limited employment opportunities.

There is close co-operation between the service and many of the approved schools but it seems very desirable, as suggested by the council, that this should be extended to all of them as the managers have a statutory responsibility to assist boys and girls leaving the school to find suitable employment. But in order to give these young persons sound vocational guidance and so help them to find suitable jobs the youth employment officer needs to have information about the young person of the kind provided by the confidential school leaving report. Many young persons at approved schools receive vocational training in particular trades and in some cases the training so given may count towards an apprenticeship period when this is continued after leaving the school.

Finally the report discusses the effect of the expected increase in the school leaving population. The number of young persons reaching the age of 15 was at its lowest in 1956 and thereafter it will rise until there will be half as many again in 1962. This increase will clearly have a number of important implications for the youth employment service but the period after 1962 should witness a progressive shrinkage of numbers. Assuming that there is little change in the national employment position the council is advised that these additional school leavers should be able to find jobs. It may, however, take longer for young persons to be absorbed into employment on leaving school and there may be some lengthening of the average period of unemployment on changing jobs. In addition it may prove more difficult to find openings for disabled and other handicapped persons.

AERIAL MASTS

One of the matters referred to in the recently issued annual report of the National Parks Commission is the increasing number of masts which are being erected in the countryside both for civilian purposes such as broadcasting, television and tele-communication and also for the various needs of the armed services. Smaller masts required by motoring organizations, by the police and by commercial concerns all add to the problem. By the very nature of their functions these masts tend to be prominently sited in areas of great natural beauty and they are often required to be in groups or chains so that the siting of any one predetermines to a great extent the siting of the others. The Commission thought, therefore, that the piecemeal consideration of such structures as came to their notice was a far from satisfactory way of dealing with the problem and that the Commission should try to obtain a full picture of the various projects that were being planned. It was felt also that they ought to try to obtain the introduction of some procedure for pooling the available information so that with a measure of co-ordination the number of masts might be reduced by planning joint-users schemes. They accordingly approached the Air Ministry, the General Post Office, the B.B.C., the I.T.A. and the Automobile Association. All these bodies showed themselves to be very willing to co-operate and gave the Commission much information about their future plans.

The question of the joint user of masts has been discussed with the Postmaster General who has promised to consider with other interested parties the various problems involved. The service departments have also agreed to accept the principle of sharing masts. The Commission are considering with the Ministry of Housing and Local Government how best the various interests can be brought together so that the full extent of the problem can be known and some means devised to resolve with competent assistance the difficulties involved in the sharing of masts by two or more users.

NOTICES

The eighth annual conference of the Association of Children's Officers will be held at Buxton from September 25 to 27, 1957, inclusive, under the presidency of Mr. A. S. N. Allison, county children's officer, Derbyshire.

BOOKS AND PAPERS RECEIVED

The Annual Charities Register and Digest. Butterworth & Co. (Publishers), Ltd. Price 17*s.* 6*d.* net, postage 1*s.* 5*d.* extra.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

The Magistrates' Courts Bill was accorded a Second Reading in the House of Lords.

Moving the Second Reading, Viscount Hailsham said that with some minor exceptions the Bill was designed to carry out the recommendations of the Departmental Committee under Sir Reginald Sharpe.

The first clause was designed to give the magistrates' courts the power to act on a written admission of guilt. The present situation was that where a defendant to summary proceedings wrote to admit his guilt, the magistrates were not empowered to act on the admission to the extent of dispensing with the attendance of witnesses, and, in particular, even where the attendance of some of the less important witnesses was dispensed with, a sufficient number in each case, including the prosecuting policeman, had to be in attendance, notwithstanding that the defendant himself had not thought it worth his while to come and notwithstanding that he admitted his guilt in writing. The Committee found that that defect in the Metropolitan District alone took the equivalent of the full time of 89 policemen a day. That fact alone would give an overwhelming case for accepting the recommendations of the Committee on this point.

The recommendations were limited to summary offences. It was not thought right to confine it to motoring offences in name, although it was supposed in practice that the procedure would be invoked for motoring offences rather more commonly than for other cases. The criterion was whether a sentence of not more than three months' imprisonment could be imposed, although there was a particular provision in cl. 1 that before the court proceeded to the imposition of any sentence of imprisonment or disqualification, it was necessary to grant an adjournment in order to provide the defendant with an additional opportunity to attend. The procedure was voluntary; that was to say, whether it was invoked at all depended upon the concurrence of the prosecutor, the defendant and the court. To that extent, therefore, the defendant's position was safeguarded. Moreover, a number of safeguards were provided, including the option to the defendant to withdraw his notice of a plea of guilty at any time before the hearing.

The second clause dealt with a somewhat similar kind of difficulty in relation to the identity of drivers of vehicles. In the absence of a witness, it was at the moment impossible to prove the identity of a driver of a vehicle who was guilty of a minor offence—for instance, a parking offence—simply upon a written admission. An oral admission, of course, had to be proved by a witness; indeed, a written admission would have to be proved by a witness who saw the document made or knew the handwriting. The provisions in cl. 2 dealt with that situation. It was considered necessary since, upon the introduction of the new codes relating to parking meters and to parking, there would be a large number of cases of that kind, and it was proposed to use that clause in connection with s. 113 of the Road Traffic Act in order to dispense with the attendance of witnesses in that case.

Clause 3 of the Bill dealt with the proof of previous convictions. As the law stood, a defendant who did not attend the hearing could not have previous convictions proved against him owing to the practical impossibility of adducing evidence that the person supposedly before the court but not in fact present was the same person who was convicted on the other occasions of which the police might know. To some extent, of course, endorsements on a driving licence provided a safeguard against that, but they were by no means a complete safeguard; and, in any event, even in cases to which they applied, they were removed after a lapse of time, or might be removed on the application of the driver after a lapse of three years from the time of the offence to which they related. The result was that under the existing law it was wise for persons with a long record not revealed on their driving licence to absent themselves from court when charged with motoring offences and to leave the police in the position of being unable to prove previous convictions, with the result that those offenders were dealt with as first offenders. That was not considered satisfactory. The police could, of course, have a warrant issued for the arrest of the offender who adopted that course, but they usually considered that such a course was extreme and unduly harsh. The result was that the offences were not proved at all.

Clause 3 of the Bill provided that:

> "Where a person is convicted of a summary offence by a magistrates' court, other than a juvenile court, and it is proved to the satisfaction of the court, on oath or in the prescribed manner, that not less than seven days previously a notice was served on the accused in the prescribed form and manner specifying any alleged previous conviction of the accused of a summary offence proposed to be brought to the notice of the court in the event of his conviction of the offence charged, and the accused is not present in person before the court, the court may take account of any such previous conviction so specified as if the accused had appeared and admitted it."

Lord Lucas of Chilworth said that although it was a Bill of only three clauses, it marked a turning point in the legislation of this country. The Bill was a compromise between having in this country traffic courts solely concerned with road vehicle offences, which took up such a large amount of ordinary police time, and going to the other extreme, which was in vogue in other parts of the world, of fining on the spot.

Replying to points raised in the debate which followed, Viscount Hailsham said that at present defendants did not come to court on offences which were not very serious, and they habitually wrote letters saying that they were guilty, believing that the court would act upon them as courts might do, though not legally.

The question was, what was to be done when they did? That was the question which that Bill sought to answer by saying that, provided that certain conditions were complied with, the magistrates should be entitled to act on an admission of guilt.

If the defendant sent a written admission of guilt, the police witnesses need not come in order to prove it. Therefore, on the question of means the situation would be no worse for him in future than it was now.

On the question of disqualification, the view of those framing the Bill has been that where so serious a step as disqualification was contemplated, the motorist who wrote to the bench admitting guilt should be given a special opportunity of knowing what was afoot.

If the defendant desired to alter his plea, the magistrates having adjourned the case for his attendance under the new procedure, he could do so; in fact, the Bill was so framed. But if the magistrates had adjourned for sentence only, he could not do so, because by that time the letter had already been acted upon. Of course, in any event he could, as now, appeal against sentence if he considered it excessive. There was always the quarter sessions to supervise the magistrates.

Clause 2 dealt with proving the identity of the driver by an admission, and it had been the intention of the Government to limit its provisions to minor offences, such as parking offences.

Lord Merthyr had asked why the Government had not followed the recommendation of the Sharpe Committee in applying the procedure to juvenile courts. The Sharpe Committee had recommended that the procedure should be applicable to young persons, although they had made no recommendation for children. The reason for their departure from the Report of the Committee was that there were special difficulties about applying that sort of procedure in juvenile courts, and since the whole procedure in juvenile courts was now being considered by another committee under the chairmanship of Lord Ingleby, the Government had thought it best to leave the procedure of juvenile courts unchanged for the present.

How easy it is to forget
The other kind of debt,
And in time actually to regard
Such a debt as statute-barred.

J.P.C.

Doctors and lawyers he couldn't abide,
For lack of the first he eventually died,
For lack of the latter—his muddled affairs
Ensured his estate was eventually theirs.

J.P.C.

PERSONALIA

APPOINTMENTS

Mr. Eric Graham Thomas, LL.B., has been appointed, as from April 1, next, to the position of town clerk of the borough of Rawtenstall, Lancs. Mr. Thomas is at present deputy town clerk of Loughborough, Leics., which latter appointment he has held since January, 1953, being admitted on March 1, 1950. His previous appointments prior to being appointed deputy town clerk of Loughborough were: assistant solicitor to Dudley county borough from January to March, 1950; assistant solicitor to Halifax county borough from March, 1950, to June, 1952, and assistant solicitor to Loughborough borough from June, 1952, to 1953. Mr. Thomas succeeds Mr. J. W. Blomeley, LL.B., L.A.M.T.P.I., on his relinquishing his present appointment on March 31, next, to take up the townclerkship of Swinton and Pendlebury, *see* our issue of January 12, last.

Mr. John Saunders, deputy clerk of Chester-le-Street, Durham, rural district council, is to be clerk to the council in succession to Mr. R. C. Bell, who has retired on health grounds.

Mr. George Robinson, senior assistant solicitor to the borough of Finchley, Middx., has been appointed deputy town clerk of Chelmsford, Essex. He has previously served with Ashton-under-Lyne, Barking and Malden and Coombe borough councils. Mr. Robinson will succeed Mr. Trevor Scholes, M.C., LL.B., who was recently appointed deputy town clerk and deputy clerk of the peace of Maidstone, Kent.

Mr. William Bertram Wolfe, LL.B. (Hons.), has been appointed deputy town clerk of the borough of Darwen, Lancs. Mr. Wolfe is 34 years of age. He is at present senior assistant solicitor to Stockport county borough council. Mr. Wolfe will take up his new duties on April 1, next.

Mr. G. Morris, LL.B., L.A.M.T.P.I., at present first assistant solicitor to the county borough of Dudley, has been appointed assistant solicitor in the office of the town clerk of Swansea county borough, Mr. T. B. Bowen, C.B.E., M.A.

Mr. Walter Harold Haig has been appointed official receiver for the bankruptcy district of the county courts of Birmingham, Coventry, Dudley, Hereford, Kidderminster, Leominster, Stourbridge, Walsall, Warwick, West Bromwich, Wolverhampton, Worcester. Mr. Haig replaced Mr. R. K. Clark, O.B.E., who retired on February 16, last. This appointment, announced by the Board of Trade, took effect from February 17, last.

Mr. Ernest Reuben Pearcey Jerred has been appointed an additional male probation officer for the county borough of Northampton. Mr. Jerred is 40 years of age. He served as an inspector in the N.S.P.C.C. (Ilkeston, Alfreton and Ripley, Derbyshire branch) from October, 1947 to March, 1956. Mr. Jerred then had a year's experience on the Home Office training course, which he completes today. During the past year he has had two months with the Bristol Council of Social Service and five months Home Office theoretical training, together with practical experience with the probation areas of Gloucestershire and Yorkshire, (West Riding).

HONOUR

Mr. E. P. Smith, clerk to the Soke of Peterborough county council, and the clerk to the Isle of Ely county council, Mr. R. F. G. Thurlow, have recently been elected presidents of the Peterborough and District Law Society and the Cambridgeshire and District Law Society respectively for 1957.

RETIREMENTS

Mr. F. A. W. Wilden is to retire at the end of June from his post as clerk and chief financial officer to Thedwastre, West Suffolk, rural district council. Mr. Wilden has held the post for the past 22 years. Now 65 years of age, Mr. Wilden succeeded to the appointment on the death of Mr. H. E. Wilkes in 1935. Altogether, his service with the council extends over the long period of 49 years. He will be succeeded as clerk by Mr. A. Owen, who has been employed in the council's offices since 1940, and at present is accountant and assistant clerk. Thirty-three years of age, Mr. Owen will take over the appointment of superintendent registrar of births, marriages and deaths for the Gipping registration district, in succession to Mr. Wilden.

OBITUARY

His Honour Judge Hubert Bayley Drysdale Woodcock, Q.C., a county court Judge from 1924 until 1940, has died after a short illness. He was 89. Judge Woodcock was called to the bar at the Middle Temple in 1891. He became recorder of Stamford, Lincs., from 1913 to 1924 and was acting chairman of quarter sessions of the Soke of Peterborough, from 1916 to 1942. Judge Woodcock was a county court Judge on the Leeds and Wakefield circuit from 1924 to 1935 and on the Marylebone, London, circuit from 1936 to 1940, when he retired. He is survived by a son and a daughter.

Major Hubert Frederick Ling, M.C., T.D., former clerk to Framlingham, East Suffolk, justices, has died at the age of 71. Major Ling was admitted in 1909 and practised at Framlingham, first in partnership with his father, the late Mr. F. G. Ling, and afterwards as sole principal. Some years ago he acquired the practice carried on under the name of Messrs. Southwell and Fry at Saxmundham. He was for many years clerk to the justices for the Framlingham petty sessional division, from which office he retired on reaching the age limit in March, 1955.

Mr. John Harker, clerk to North Westmorland rural district council for many years, has died at the age of 75. Mr. Harker was admitted in May, 1904, and in the same year entered into partnership with the late Mr. William Hewitson, as Messrs. Hewitson and Harker, of Appleby and Kirkby Stephen, North Westmorland. Mr. Harker became clerk to the former East Westmorland rural council in 1927, on the death of his partner, and continued in that capacity when it was amalgamated with the Shap and West Ward council in 1935, becoming the North Westmorland council.

REVIEWS

Rayden's Practice and Law in the Divorce Division. Third Cumulative Supplement to Sixth Edition. By Joseph Jackson, M.A., LL.B. (Cantab.), LL.M. (Lond.), Barrister-at-Law and D. H. Colgate, LL.B. (Lond.) of the Probate and Divorce Registry. London: Butterworth & Co. (Publishers), Ltd., 88, Kingsway, W.C.2. Supplement alone 15s., postage 8d. Complete work 87s. 6d., postage, 2s. 3d.

The need for a new supplement is shown by the fact that although the previous supplement was published a year ago, there has been so much additional matter to be inserted that the table of cases which in the previous supplement occupied nine pages now occupies 12, and the additional legislation has increased from 16 pages to 40 pages.

The supplement follows the familiar and convenient pattern of a noter-up which notes the effect of new cases and statutory legislation, each amendment being noted to the relevant pages of the main volume, followed by a section containing the text of additional statutory material issued since the main volume was published. The Legal Aid (General) Regulations, 1950, are printed as amended by the Amendment Regulations of 1954 and 1955.

The supplement brings the law up to October 1, 1956.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, February 19

MAGISTRATES' COURTS BILL—read 2a.
CINEMATOGRAPH FILMS BILL—read 3a.

Thursday, February 21

HOMICIDE BILL—read 2a.

HOUSE OF COMMONS

Wednesday, February 20

PUBLIC TRUSTEE (FEES) BILL—read 2a.
PATENTS BILL—read 3a.
RATING AND VALUATION BILL—read 3a.

Friday, February 22

LOCAL GOVERNMENT (PROMOTION OF BILLS) BILL—read 2a.
ADVERTISEMENTS (HIRE PURCHASE) BILL—read 2a.

THE IMPROVED VERSION

The solicitor showed to his client
The draft of the Statement of Claim,
Which was drawn by an eminent counsel
And signed with his elegant name.

The client then read it with interest
(The first that he'd happened to see)
And said as he quietly returned it
" Do you mean that this happened to me?"

J.P.C.

NON-TOLERATION

There seems to be something in the air of our great industrial cities that makes for the intolerances of authoritarian rule. Three years or so ago, at Warrington, Lancs., there was the Battle of the Schoolgirl's Trousers. A local headmistress had decreed that such garments were "unseemly and unhygienic" for feminine wear, thus writing off in one sweeping generalization the sartorial customs of several hundred millions of women in that extensive portion of the earth's surface between Suez and Shanghai. The girl, having been refused admission to school whenever she appeared in the offending garments, eventually stayed away altogether; the local authority prosecuted the father under s. 39 (1) of the Education Act, 1944, on the ground that, being a registered pupil at the school, the girl had failed to attend regularly thereat; the justices convicted and fined the father; the Appeal Committee allowed his appeal and quashed the conviction. The local authority appealed to the Divisional Court which, in *Spiers* v. *Warrington Corporation* [1953] 2 All E.R. 1052, reversed the Appeal Committee's decision and restored the conviction. In the course of his judgment Lord Goddard, C.J., expressed the view that the headmistress had the right and the power to prescribe, as a matter of discipline, what kind of costume a child at the school should or should not be permitted to wear, and the two other Judges concurred. *Communiqués* from the opposing headquarters were issued from time to time thereafter, giving the impression that a strong rearguard action was still being fought by the resistance movement, which seems to have flickered out only when the girl got beyond compulsory school age. At any rate, the state of the law, as revealed by the judgment, seemed to many worthy persons, at the time, an encouragement to the forces of reaction, a blow to the sturdy independence of those *in statu pupillari* (now identified, in the language of the cinema, as "teenage rebels") and a justification of that underground guerilla warfare of which St. Trinian's is both the rallying-point and the acknowledged symbol.

Now an educational institution in Birmingham is following suit—though not on the question what girls should or should not wear at school, but what they should or should not eat. At a girls' technical school, *The Times* tells us, the ukase has gone forth, in the form of a Headmistress's Rule, that "girls must not take oranges to school." This prohibition, which bids fair to affect the time-honoured tradition of taking "an apple for teacher," has produced a storm in the municipal teacups, the rumblings of which have led to some fluttering in the scholastic dovecotes. At least one city councillor has described the rule as "ridiculous"; the headmistress has indignantly refuted this view, pointing out that "the flavour of an orange lasts for a day, and they (*sic*) smell so horribly" (*sic*). Thus the quotation in *The Times*: if it accurately reproduces what has been said, we wonder whether the beneficial effect (if any) upon juvenile characters of this rigidly disciplinarian treatment transcends the damage done to their literary style by the two linguistic solecisms in the latter part of the quotation.

"By their fruits ye shall know them" is a maxim of the highest authority, and when it comes to the application of arbitrary rules the Third Chapter of *Genesis* affords as good an example as any. Tradition will have it that the forbidden fruit that was the subject of Rule No. 1 in the Garden of Eden was an apple; though, as every reader of the Bible knows, the term used is the generic word "fruit," which might just as well have referred to a pear, watermelon, grape, banana or orange. Pædagogical theory in Birmingham seems to plump for the orange as the source of Original Sin; it remains to be seen whether there are not other fruits of the Tree of Knowledge equally liable to corrupt the local youth and imperil their immortal souls.

Compared with the ubiquitous apple, the orange, in history and legend, has had a comparatively uninteresting press. Bottom offered to play Pyramus in "your orange-tawny beard," which is one of very few literary references. Oranges are coupled with lemons in a very poor rhyme about the Bells of St. Clement's, but that is about all we learnt about them in our nursery-days. The only time when the orange achieved some fame in England was during the reign of those dull but respectable monarchs referred to in *1066 and All That* under the composite title of "Williamanmary," in a section (or perhaps it should be called a segment) headed "England Ruled by an Orange." Following upon the graceful romanticism of Charles I, the picturesque ugliness of Oliver Cromwell, the alluring wickedness of Charles II and the deep-dyed villainy of his brother James, The Orange, in our schooldays, stood for an exemplary character of the most tiresome description, engaged in incomprehensible activities that switched, bewilderingly, from the Netherlands one minute to Ireland the next, and having (as it seemed to us) precious little to do with English history at all. That uncertainty as to number and gender, which is partially reflected in the above quotation from *The Times*, is appropriately emphasized in the apocryphal history-book to which we have referred:

> "Williamanmary for some reason was referred to as The Orange in their own country of Holland, and were popular as King of England because the people naturally believed it was descended from Nell Glyn. It was on the whole a Good King, and one of their first Acts was the Toleration Act, which said they would tolerate anything, though afterwards it went back on this and decided that they could not tolerate the Scots."

Scotsmen (and perhaps Irishmen too) will find just retribution in the fact that some person or persons, "dressed in a little brief authority," cannot now tolerate The Orange.

A.L.P.

ADDITIONS TO COMMISSIONS

CAERNARVON COUNTY

Mrs. Rhoda Irene Glynne Hughes, Bryn Tawel, Betwsycoed.

DERBY COUNTY

Harry Granville Booth, 30, Hickton Road, Swanwick.
William Byard Day, The Old Priory, Sutton Scarsdale, Chesterfield.
Bryan Norman Rawnsley Elder, Park Place, 158c, Derby Road, Heanor.
Earnest Harry Burchell Grey, Ash House, Field Lane, Belper.
William Horobin, 34, Chatsworth Road, Rowsley, Matlock.
Dennis Lacy-Hulbert, Walton Cottage, Walton, nr. Chesterfield.
Miss Hermine Joan Carmichael Jackson, Handley House, Clay Cross, nr. Chesterfield.
Reginald George Pike, 99, Thornbridge Drive, Frecheville.
Bernard Garfield Porter, Brookfield House, Station Road, Clowne.
Mrs. Helen Elizabeth Boyd Pulvertaft, Holmeside, Hazelwood, Derbys.
Alpheus John Robotham, Cranford, King's Croft, Allestree, Derbys.
Mrs. Doris Ada Severn, Pendean, Blackwell, Derbyshire.
Miss Margaret Nancy Stocks, Fairfield, Draycott, nr. Derby.
Mrs. Margery Gertrude Cann Sulley, The Edge, Quarndon, Derby.
Miss Phyllis Mary Tatham, 27, Millfield Road, Ilkeston, Derbys.
John Hallas Thompson, 7, Queen's Drive, Ilkeston, Derbys.

EAST SUSSEX COUNTY

Mrs. Marjorie Eileen Block, Little Park Farm, Battle.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Food and Drugs—*Food Hygiene Regulations*, 1955, *s.* 28 (1)—"*Open food for immediate consumption.*"

Regulation 28 (1) of the Food Hygiene Regulations, 1955, sets out certain provisions which relate to "every food business which is carried on from a stall which consists wholly or partly of the supply of open food for immediate consumption."

"Open food" is defined in reg. 2 as follows:—

"Food not contained in a container of such materials and so closed, as to exclude all risk of contamination."

In view of certain practical opinions to the contrary, I shall be glad to have your opinion as to whether, say, grapes, tomatoes, apples, pears, peaches and similar types of fruit which can be eaten on the spot immediately after purchase can be regarded as "open food for immediate consumption." GALOW.

Answer.

There is no doubt that the type of fruit mentioned is "open food," as generally sold, but it is much more difficult to decide whether it is "open food for immediate consumption." The phrase is susceptible of differing interpretations. It could mean "capable of immediate consumption," or "for the purpose of immediate consumption," and until there has been an authoritative ruling it is difficult to be dogmatic. We incline somewhat hesitantly to the second interpretation, as we feel the regulation is aimed at stalls selling food which is sold with a view to its being eaten on the spot, *e.g.*, hot pies. Some slender support is given to this view from the exceptions mentioned, *viz.*, roast chestnuts and hot potatoes. On balance, we do not consider that fruit comes within this regulation, as it is not food naturally assumed to be for immediate consumption. It would be ludicrous if the stall-holder were required to ask every customer whether he intended to eat the fruit then and there, and to refuse to serve him if he said "yes"—as would apparently be necessary in order to avoid having to provide hot water, sinks, etc., for the stall.

2.—Highway—*Traffic signs on surface—Unauthorized signs.*

Can you please advise:—

1. Whether there is any statutory authority for the highway authority or any other local authority to paint on the surface of any highway repairable by the inhabitants at large words of general traffic direction such as "Bus stop" and "No Parking"?

2. Is there any authority for private persons to do the same on that portion of any highway repairable by the inhabitants at large which fronts on or adjoins their property? Would it be material whether or not they were the owners of the soil of the highway in question? In all cases it is assumed that the highway was not dedicated subject to any such markings.

3. If there are no authorities for the above, what offences (if any) have been committed and under what statutes, or what common law remedies are available to persons aggrieved, including the police, the highway authority, or any other local authority? P. ELVED.

Answer.

1. Yes, under the Road Traffic Act, 1930, s. 48, as extended by the Road Traffic Act, 1956, s. 35.

2. No, in both cases.

3. The sign or direction may be removed under s. 48 of the Act of 1930 at the expense of the person placing it there. Some notices might amount to an indictable nuisance as being an interference with the free passage of the highway by deterring the public from its use.

3.—Highway—*Traffic signs on surface—Unauthorized signs.*

Would you please confirm that in giving the opinion in your answer above you had regard to *Evans* v. *Cross* [1938] 1 All E.R. 751; 102 J.P. 127? Did not this case take these markings outside s. 48 of the Road Traffic Act, 1930, and render the highway authority powerless. I am supported in this view by s. 35 of the Road Traffic Act, 1956. K. ELVED.

Answer.

We had *Evans* v. *Cross*, *supra*, in mind. That case did not decide that white lines were not traffic signs lawfully placed, but that they were not traffic signs within s. 49 of the Road Traffic Act, 1930, "for regulating the movement of traffic or indicating the route to be followed by traffic"; they are "traffic signs . . . intended to be, and are helpful indications of the road which may best be, followed."

Painted signs on the road such as "Bus stop"; "No Parking" are, therefore, if authorized by the Minister, lawful traffic signs under s. 48 of the Act. Section 35 of the Road Traffic Act, 1956, will enable a breach thereof to be dealt with under s. 49 of the Act.

The placing of traffic signs by private persons is also, in our opinion, prohibited by s. 48 of the Act of 1930, without the aid of s. 35 of the Act of 1956, though s. 35 of the Act of 1956 will remove all doubt. The question whether proceedings are justified will also be eased by s. 35 (2).

4.—Husband and Wife—*Order for custody of children made by High Court—Application for maintenance order.*

Sometime in 1955 H and W were divorced. Custody of the two children of the marriage was granted to the wife, but, as the husband agreed voluntarily to make a maintenance allowance in respect of them, no order as to maintenance was sought then.

Since that date the ex-wife has in fact remarried but maintenance has been paid regularly by the ex-husband in respect of the two children, until lately, when he has been failing to do so.

Recently the ex-wife made application to the magistrates' court for maintenance for the children. This was not resisted by the ex-husband, who agreed to pay £1 per week in respect of each child, and an order was made accordingly by the justices. The matter of the custody of the children was not raised, the applicant's solicitor remarking, that this point had already been determined by the High Court.

Doubt now arises, however, whether the justices acted correctly in making this order for maintenance, or whether the matter should have been referred to the High Court. It would seem their power to do so is bound up with the question of custody (*see* s. 3, Guardianship of Infants Act, 1925), and raises doubt whether they can deal with the question of maintenance only as divorced from this.

Furthermore, the question of "conflict of jurisdiction" with the High Court seems involved, although the matter of the divorce proceedings had long been disposed of (*See Cooper* v. *Cooper* [1952] 2 All E.R. 857).

Your opinion as to the power of the justices to act and make a valid order herein would be welcomed, together with your observations upon the point as to conflict of jurisdiction. VOURA.

Answer.

Section 3 of the Guardianship of Infants Act, 1925, enables a court which makes an order giving the custody of an infant to the mother to make a further order for the maintenance of the infant.

In our opinion no court other than the court which made the custody order can entertain an application for a maintenance order. There would appear to be no conflict of jurisdiction.

5.—Jury—*Registration of owner—Effect of mortgage.*

The Juries Act, 1922, states that a householder of property assessed to the general rate with a value of £20 (or in London £30), or an owner/occupier with property assessed to the general rate with a value of £10, is liable to be entered on the list of jurors, provided he is not disqualified by age or occupation. It has been suggested that a person buying his own house (the rateable value of which is £10) and subject to mortgage should not be regarded as an owner for the purpose of the jury list, and should only be listed as a juror if the rateable value of the property is £20 or over. Do you agree that, where there is no disqualification by age or occupation, a person shown in the rate book as an owner/occupier of property with a rateable value of £10 or over should, irrespective of any mortgage, be registered as a juror? ANAM.

Answer.

We do not consider that liability as an owner is affected by the mortgage of the owner's interest.

6.—Land Charges—*Private sewer notices—Registration as land charge or local land charge.*

P.P. 4 at 120 J.P.N. 73 deals with the registration under the Land Charges Act, 1925, of notices served under s. 38 (2) of the Public Health Act, 1936. I note you agree with your correspondent's suggestion that these notices should be registered in class C (iii) in the register maintained at the Land Registry. I should have thought that these notices were registrable under s. 15 of the Land Charges Act, 1925, in the local land charges register, and accordingly by virtue of subs. (3) of that section there was no need to register them at all in the Land Registry, but I should be obliged for your further observations.

CATTO.

Answer.

Where the money has been paid out by, and is recoverable by, the local authority, we agree that there is a local land charge: *see* s. 291 (1) of the Public Health Act, 1936, and *Lumley's* note thereon at the foot

of p. 2700. But the charge is still capable of registration under part V of the Act of 1925 ; *i.e.*, s. 15 (2) of the Act does not preclude this, and the query at p. 731 merely asked about the class in which to register. Moreover s. 38 (2) empowers the local authority also to apportion moneys to be paid to a private person, and the query at p. 731 might have been primarily concerned with this, which cannot be a local land charge, and *Lumley*, in note (*c*) on p. 2336, agrees with us that registration under part V of the Land Charges Act, 1925, (which is not necessary to protect the local authority) is necessary to protect the private person.

7.—Licensing—*Occasional licence—Sales of intoxicating liquor by person other than holder of licence.*

I am interested in your answer to P.P 2 at 120 J.P.N. 495. *Mellor* v. *Lydiate* (1914) 79 J.P. 68 decided that a sale of the brewers' intoxicating liquor by the manager was not a sale by the brewers so as to necessitate the holding of a licence by the brewers. Would not the same position exist in connexion with sales under an occasional licence?

The brewers themselves could not obtain an occasional licence as, I take it, the manager would be the holder of the licence in respect of the licensed premises.

With regard to the third paragraph of your answer, assuming the manager received remuneration for his services in connexion with the occasional licence, has he not then as much a *bona fide* interest in the business as he has in respect of the business of the licensed house?

NALAC.

Answer.

Our answer to P.P. 2 on p. 495, *ante*, was directed against the practice mentioned in the question whereby a firm of brewers " avoided the provisions of the licensing law by keeping on the premises a 'tame' licensed person "—the quotation is from the judgment of Phillimore, J., in *Dunning* v. *Owen* (1907) 71 J.P. 383.

It appeared from the question that a licence holder merely lent his name to an application for an occasional licence, and, after the grant, completely detached himself in fact from the proceedings, although, as is clear from s. 148 (5) of the Licensing Act, 1953, he could not detach himself in law.

The question now put to us suggests an entirely different situation in which a manager-licence-holder obtains an occasional licence and sells intoxicating liquor by virtue of its authority as part of his licensed business, receiving remuneration for his services. This is quite lawful.

Our answer to both the questions put by our correspondent is " Yes."

See also our answer to P.P. 4 at 119 J.P.N. 467.

8.—Licensing—" *Supper-hour* " *extension—Permitted hours.*

A client of ours is the proprietor of a club which is registered with the clerk to the justices. A certificate under s. 104 of the Licensing Act, 1953, has been granted.

Your valued opinion on the following points is requested:—

1. Can intoxicating liquor be supplied during the extra hour on Christmas Day and Good Fridays (except when Christmas Day falls on a Sunday)?

2. We believe that after the end of the extra hour members have a half hour in which to consume the liquor supplied during the hour. Is this correct and what is the authority?

3. The proprietor wishes to alter the permitted hours of the club so that they begin at 2 *p.m.* and end at 10 *p.m.* He says that these hours apply to a great number of golf clubs and organizations with the break of two hours required by the Act provided by the period between 12 noon and 2 *p.m.* What is your opinion, please?

ONEAS.

Answer.

1. Yes.

2. Yes, if the intoxicating liquor was served at the same time as a meal and for consumption at the meal (Licensing Act, 1953, s. 100 (2) (*d*)).

3. Although the phrase " there shall be a break of at least two hours in the afternoon " which appears in s. 101 (2) of the Licensing Act, 1953, seems to require that some part of the period of permitted hours shall be before and some part after the hour of noon, the phrase is usually given the construction that there shall be a continuous period of two hours after noon which are not " permitted hours." According to the latter construction, the alteration suggested will be in order.

9.—Magistrates—*Jurisdiction and powers—Award of costs of witnesses in cases tried summarily—Exclusion of police fees.*

I should be obliged if you would let me have the answers to the following questions:

(*a*) When a defendant has been convicted of a summary offence (*e.g.*, a motorist failing to stop after an accident) in a police prosecution, can the court order the defendant to pay the costs which have been incurred by the police in bringing the evidence to court ?

(*b*) If the answer to (*a*) is " yes," can the order to pay police costs include the cost of photographs, and the fares and subsistence to police officers who may have been called from other police districts ?

(*c*) If the answer to either of the above questions is " yes "—does s. 31 of the Magistrates' Courts Act, 1952, mean that, in the event of the magistrates deciding to impose a fine, none of the expenses incurred by the policemen can be included in the order as to costs; or, does the section mean that when a fine is imposed the police *fees* have to be separated from police *expenses* and have to be omitted from the court's order ?

In my efforts to get the position clarified I have confined the above questions to *summary cases*. May I now take the subject a stage further by asking:

(*d*) Is the position any different if the case before the court is an indictable offence which is being disposed of summarily ?

J. ARMAC.

Answer.

(*a*) Yes (Costs in Criminal Cases Act, 1952, s. 6).

(*b*) Yes.

(*c*) It means that in fixing the amount of costs when a fine is imposed any police *fees* must be excluded from the other expenses and must not be taken into account.

(*d*) No.

10.—Magistrates—*Jurisdiction and powers—Forging of entry (under £20) in a rent book—Jurisdiction to try—Court of trial.*

Recently a man was charged at this station with forgery—contrary to s. 2 (2) (*a*) of the Forgery Act, 1913. The offence being that he did forge a valuable security, namely, a rent book purporting to show the payment of rent of £1 1*s.* 7*d.* There were three similar charges against him. This case came before the magistrates and it was decided that they had no power to deal with it and the accused was committed to the Assizes.

I contended from the beginning that as the amount was under £20 this man should have been dealt with in the summary court. At the Assizes the man was found Not Guilty and the Judge passed the remark that this case should not have been brought to the Assizes.

I should be pleased if you could give your opinion as to whether this case could have been tried at the summary court or not.

JORTHA.

Answer.

The jurisdiction to try summarily offences under s. 2 (2) (*a*), Forgery Act, 1913, is limited to offences in relation to a document *which is an authority or request for the payment of money or for the delivery or transfer of goods and chattels*, where the amount involved does not exceed £20. A rent book is not such a document and the offence in question was not triable summarily.

We imagine that the learned Judge may have considered that the rent book constituted an accountable receipt. In that event, as the amounts involved were under £20, the offence was triable at quarter sessions presided over by a legally qualified chairman [*see* Administration of Justice (Miscellaneous Provisions) Act, 1938, s. 2 and sch. I].

11.—Magistrates—*Jurisdiction and powers—Summary offences—Prosecution seeking to proceed on a lesser charge and to offer no evidence on a more serious one—Need for consent of court.*

In a recent case before a magistrates' court here, the solicitor for the prosecution stated that he was prepared to accept a plea of guilty to a charge of careless driving and asked the justices to allow the charge of driving whilst under the influence of drink arising out of the same incident and preferred against the same defendant to be withdrawn.

Before following the course suggested, the justices asked to be told the facts. The solicitor outlined the case. The justices then announced that in their view the prosecution of the more serious charge should proceed.

I should like to have your comments on the procedure followed in this case. and particularly I should like to know whether you consider the justices are right in inquiring into the facts of the charges in which the prosecution either offer no evidence or ask for the charge to be withdrawn.

I am not referring to indictable cases which have been wholly withdrawn which are referred to the Director of Public Prosecutions. I am thinking of the withdrawal of serious charges where an alternative and less serious charge has been preferred to which the defendant has pleaded guilty. In such a case is it entirely a matter for the prosecution whether or not the more serious charge is proceeded with or may the justices intervene as they did in the case to which I have drawn your attention. Had the prosecution offered no evidence on the drink charge despite the view of the justices, what action could the justices have taken ?

MOTIN.

Answer.

We agree that the justices cannot *compel* the prosecutor to proceed on a charge on which he offers no evidence but we must point out

that reg. 9 of the Prosecution of Offences Regulations, 1946, relates not only to indictable offences but also to " the prosecution for an offence instituted before . . . a court of summary jurisdiction." Moreover an offence against s. 15, Road Traffic Act, 1930, is one to which s. 18, Magistrates' Courts Act, 1952, applies and it does not become a summary offence unless the court determines to try it summarily.

We think that the justices acted quite properly in the case in question and that had the prosecution declined to proceed on the s. 15 charge the matter should have been referred to the Director under reg. 9, *supra*.

12.—Parish Council—*Erection and maintenance of roadside seats.*

Doubt has arisen whether parish councils can erect and maintain roadside seats. I advised in 1953 under the Local Government (Miscellaneous Provisions) Act of that year that parish councils could do so under ss. 4–7 at stopping places on bus routes, seats being a form of other accommodation for persons intending to travel. Section 14 of the Public Health Act, 1925, has for many years been in force in this district. As the parish council is a person, and with the consent of the local authority (the district council) any person may erect and maintain seats, has not the parish council power to do so without further statutory authority where the district council so permits?

DATTLE.

Answer.

We see no reason to differ from the opinion expressed in your query so far as the Act of 1953 is concerned. As regards the Act of 1925, we agree that by s. 19 of the Interpretation Act, 1889, the parish council is a person, but we do not think the Interpretation Act can, as is apparently suggested, be used to supply *vires* to the council. If it could be thus construed, the need for many enabling statutes would disappear. We notice that your query speaks of " roadside " seats. We take it that s. 1 of the Public Improvements Act, 1860, does not in your opinion apply to the roads you have in mind. This has been used in some places for seats beside a traffic road, and we do not remember that the district auditor has interfered, though we have ourselves doubted whether by virtue of that Act the seat could be placed upon the highway: *see* 112 J.P.N. 793; 113 J.P.N. 67, 117, 225.

13.—Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8—*Notice to end or modify concession—Date of operation.*

My council has now decided to serve 36 months' notice on the occupiers of hereditaments entitled to the benefit of s. 8 (1) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955. It is doubtful from subs. (3) whether it is a condition precedent that para. (*b*) of subs. (2) shall already have had effect before notice can be given, or whether the words " at any time " in subs. (3) are sufficient to ensure the validity of a notice, provided that para. (*b*) of subs. (2) subsequently operates. What is the earliest date a notice served before March 31, 1957, can specify as that upon which the benefits of the section can be made to terminate ? Is it March 31, 1960 or March 31, 1961 ?

DARLO.

Answer.

Opposite opinions upon this have been given by counsel. Upon the structure of sub-s. (3), it can be argued that notice can not be given at all until subs. (2) (*b*) or the alternative provision in sch. 5 is applied—that is to say, not until the year beginning on April 1, 1957. Alternatively, even if the words " at any time " in subs. (3) enable the rating authority to serve its notice earlier than April, 1957, it is argued on the same line of thought that the notice cannot take effect until then, so that the 36 months mentioned in the subsection can not end earlier than 1961. The opposite argument is that this strict construction would mean that the (*b*) period must stand for a minimum of four years, making five years when the (*a*) period is added, whereas the (rather unusual) reference to " 36 months " suggests that Parliament had three years in mind, making a minimum of four years for the concession to stand, from first to last. On the whole this latter argument seems to us more consistent with the intention to allow local authorities to obtain relief from the concession, and we think the attempt should be made in proper cases, but we cannot, upon the language used, advise confidently that a local authority will succeed, if it takes steps to end the concession before 1961.

14.—Road Traffic Acts—*Careless driving—Defendant represented at the hearing by solicitor—Appeal against conviction—Application for free legal aid.*

At the last sitting of my justices a defendant was convicted of the offence of driving without due care and attention. No application was made for a legal aid certificate and he was represented by a solicitor whose services, presumably, were paid for either by himself or his insurance company. The defendant, through his solicitor, now applies for an appeal aid certificate.

It is conceivable that assuming the defendant's means were such as to prove that he could not afford to employ solicitor and counsel it would presumably be right for my justices to grant a legal aid certificate and subsequently an appeal aid certificate on a charge so serious as, perhaps, dangerous driving or driving under the influence of drink, but I am doubtful whether in respect of a charge of driving without due care and attention that charge could be deemed by my justices to be serious enough to warrant an appeal aid certificate or even a legal aid certificate in the proceedings before them.

There is another aspect of the matter and that is this: that if the professional services of the solicitor before my justices were paid for by an insurance company, then presumably they under their contract of insurance could be held to be responsible for the payment of solicitor and counsel at quarter sessions on the appeal.

To sum up, I shall be grateful if you will be good enough to let me have your opinion as to whether my justices would be in order in granting an appeal aid certificate having regard to (*a*) the fact that the charge of which the accused was convicted was merely that of driving without due care and attention; (*b*) that he presumably either paid out of his own pocket or through the means of an insurance company for his legal representation in the court of first instance, and (*c*) the charge of driving without due care and attention is such a charge as the legislature envisaged a legal aid certificate or an appeal aid certificate could be granted, remembering, of course, that the Legal Aid Act of 1949 is not in full force in respect of magistrates' courts.

MORU.

Answer.

Careless driving carries, on first conviction, a possible penalty of £40 and disqualification for one month. We see no reason, therefore, why there should be any rule that in such cases no free legal aid should be granted. It is for the court in each case to say whether " the nature of the offence of which the appellant was convicted " makes it desirable in the interests of justice that he should have free legal aid. Equally it is for them to decide whether, at the time of his application, he has sufficient means to enable him to obtain legal aid, and they should ask him to satisfy them on this point.

On both questions, in considering whether free legal aid should be granted, any doubt should be resolved in favour of granting free legal aid (Legal Aid and Advice Act, 1949, s. 18 (1)).

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